

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

ORIGINAL

77-1081

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**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

ALEXANDER GELFAND,

Defendant-Appellant.

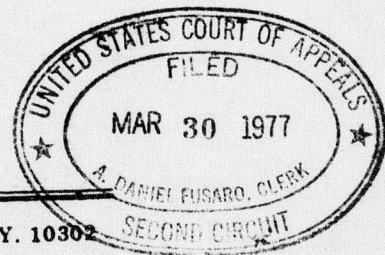
*On Appeal from the United States Court
for the Eastern District of New York*

BRIEF OF DEFENDANT-APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :
Appellee, :
- against - :
ALEXANDER GELFAND, :
Defendant-Appellant. :
----- x

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BRIEF FOR DEFENDANT-APPELLANT

ISSUES PRESENTED

1. Whether there was substantial evidence to convict the defendant upon the Second, Third and Fourth Counts of the Indictment.
2. Whether defendant's motion for judgment of acquittal should have been granted on the basis that there was insufficient evidence to permit the case to go to the jury.
3. Whether Title 21, United States Code, Section 622, under which the defendant-appellant was indicted and convicted, violates the Fifth Amendment to the Constitution of the United States of America.

STATEMENT OF THE CASE

The defendant, a meat inspector of the Department of Agriculture, Meat and Poultry Inspection Program, was charged in a four count Indictment (2*) with accepting money and other things of value in the course of his duties as a Department of Agriculture Meat Inspector, in violation of Title 21, United States Code Section 622.

After a trial by jury, the appellant was found guilty on the Second, Third and Fourth Counts, and not guilty on the First Count. Judgment of Conviction was entered by the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York, on January 21, 1977, and the defendant was sentenced to one year and one day imprisonment, and to a fine of Seven Thousand Five Hundred Dollars (\$7,500.00). The defendant appeals from the Judgment of Conviction, the sentence imposed and from the determination and orders which denied motions and applications made on behalf of the defendant.

At the trial, Government witness Jack Borenstein (M 102-117), testified as to alleged acts of prior misconduct which were not connected with the specific charges of the Indictment. The testimony

* The numbers correspond to those which appear for the document as designated in the index to the record on appeal. Hereafter, where a number is prefixed by the letter "M", it refers to the stenographic minutes of the trial.

of Government witness, Carl H. Paulaus (M 60-77), concerned Count One of the Indictment, upon which the defendant was acquitted.

With respect to Count Two of the Indictment, the Government produced testimony by Arthur Vorcheimer. Vorcheimer testified that he is the Secretary-Treasurer of J & M Vorcheimer, a veal and lamb meat company, and that said company has been receiving meat inspection. (M 42-43) He further testified that the defendant was a meat inspector that had been assigned to his firm; that he paid the defendant \$50.00 a week, once a week, on a Thursday or Friday of that week, but could not exactly recall the frequency of payments. (M 45) He further testified that the alleged payments were made in his office or in a hallway (M 46) and that his company plead guilty to having paid meat inspectors and reached an agreement with the Government by which they agreed to cooperate in the prosecution of meat inspectors and to identify the same. (M 49-50)

Upon cross examination, the witness Vorcheimer reiterated that he cooperated with the Government in exchange for no charges being lodged against him personally and that his company plead guilty to the aforesaid charge of paying meat inspectors (M 50). Vorcheimer testified that he paid the defendant, Alexander Gelfand, for six or seven weeks (M 51) and that he could further visualize at least six or seven payments (M 52), and again that he remembered

paying the defendant five or six times between July 28 and August 22, the dates incompassed within Count Two of the Indictment. (M 54) When confronted with the fact that only four weeks, specifically four Fridays, fell within the aforesaid period, the witness said that he would change his answer. Likewise, when asked if he was told that the defendant only worked two weeks within the period July 28 to August 22, would he revise his answer, Vorcheimer replied "I guess so." (M 55) The witness further testified that the alleged payments were made in secret and that he disliked meat inspectors generally. (M 57)

With respect to Count Three of the Indictment, the Government produced the testimony of the witness, Harry Buxbaum. Buxbaum testified in a similar fashion to other Government witnesses. He stated that he was the President of the Cumberland Provision Company, a processor of meat products, which company received inspections from the Department of Agriculture (M 3-4). He testified that he recognized the defendant and had, during the time that the defendant was assigned to his plant, paid the defendant sums of money, the amounts of which he could not recall. Buxbaum further testified that he really did not know on how many occasions he had paid the defendant but volunteered that he had paid on ten, fifteen or twenty occasions. He testified that these payments were made somewhere in an empty room or in an office when no one was present and that his firm had plead guilty to bribery of meat inspectors and was sentenced to pay a fine (M 12-13).

Upon cross examination Buxbaum testified that the defendant was three or four times his inspector (M 19) and that fifteen or twenty times was a correct number representing the number of the alleged payments made by him to the defendant, Alexander Gelfand. (M 20) He further testified that he could not recall the precise sums allegedly paid and that his testimony was now that he had paid the defendant twenty times (M 22-23). He testified that the defendant had worked for him before the period testified in the indictment but could not recall when or for how long. (M 27) He testified that he did not know how many days the defendant was an inspector in his plant during the period of July 29 through August 23, 1975, the period specified in the indictment. (M 33) That he did not know on what dates he allegedly made payment during the period of the indictment (M 34) and that he did not pay him twenty times during the period specified in the indictment and further that he was not sure whether the alleged twenty payments were made in 1974 or 1973 or 1975. (M 34-35) Buxbaum testified that the alleged payments were made at the offices of Cumberland Provision Company (M 38) but then stated that he was not sure whether the payments were made at the offices of Cumberland, or of Stein, a related company. (M 39)

Finally, with respect to count 4 of the indictment, the Government produced the testimony of Leonard Katz. Katz testified that he is the President of AAA Meat Company, which company is subject to and receives inspection from the Department of Agriculture.

(M 78) Katz identified the defendant in Court and that he made payments to the defendant when the defendant was assigned to his plant. (M 80-81) Katz stated that he made payments to the defendant during the period August 3 to September 19, 1975 and that in connection therewith his company plead guilty to paying meat inspectors and was sentenced to pay a fine. He testified that during the period of these alleged payments the defendant served as a part time inspector for three weeks. (M 84-87)

Upon cross examination, Katz testified that he did not remember how much money he allegedly paid to the defendant but recalled paying once every week during the period alleged in the Indictment. (M 88-89) Katz stated that he recalled this to be three payments once a week for three weeks (M 89), and when informed that the Indictment period covered approximately two months he revised his testimony to indicate that he had paid eight or nine times (M 90). When further informed that the defendant had only worked for him for only two weeks out of the period covered in the Indictment he again revised his testimony to indicate that he had paid twice if the defendant had only worked two weeks (M 90). Katz testified that payments were made on Friday and that he had named every inspector who had worked in his plant as a person receiving bribes (M92). Katz further testified that he did not know who his inspector was during the period August 18 through August 29 and that he did not remember who his inspector was for

the month of September, 1975 (M 99-100).

Anthony Perna, testified on behalf of the defendant. Mr. Perna testified that he was in the meat packing business and subject to inspection by the Department of Agriculture. Perna stated that the defendant, Alexander Gelfand was assigned to his business as a relief meat inspector on several occasions and that in the course of his dealings with the defendant he had paid no bribes to the defendant and none were solicited of him by the defendant.

Motions were made and decision reserved thereon at the conclusion of the evidence which was subsequently denied (M 123) and motions were similarly made and denied following the verdict of the jury (M 201).

ARGUMENT

POINT I

THERE WAS NO SUBSTANTIAL EVIDENCE TO
CONVICT THE DEFENDANT UPON THE SECOND,
THIRD AND FOURTH COUNTS OF THE INDICTMENT.

The verdict of a jury will not be sustained if there is no substantial evidence to support it, taking the view of the evidence most favorable to the Government.

Glasser v. United States, 315 U.S. 60 (1941); U. S. v. Francisco, 536 F.2d 1293 (9th Cir. 1976); United States v. Glover, 514 F.2d 390, 391 (9th Cir. 1975), Cert. denied, 423 U.S. 857 (1976);

People v. Reed, 40 N.Y.2d 204 (1976).

It is the duty of the Court of Appeals to reverse where the jury findings are not supported by the record, even though the Court may be loath to disturb a jury finding of a contested factual issue. United States v. Silverman, 248 F.2d 671, 686 (2d Cir. 1957), Cert. denied 355 U.S. 942 (1958).

The principle is firmly established that unless there is substantial evidence excluding every hypothesis but guilt, a submissible case is not made and where all the evidence is as consistent with innocence as with guilt the reviewing Court must reverse a judgment of conviction. See, Sykes v. United States, 312 F.2d 232 (8th Cir. 1963), Cert. denied 373 U.S. 946 (1963).

In passing upon the sufficiency of the evidence to sustain a conviction, the evidence and inferences to be drawn therefrom must be viewed in the light most favorable to the Government, and where the evidence viewed in this light falls short of the required standard of proof of the elements of the offense or is as consistent with innocence as with guilt or merely raises a suspicion of guilt, the conviction may not stand. Halfen v. United States, 324 F.2d 52 (10th Cir. 1963).

In examining the evidence as it pertains to Counts Two, Three, and Four, there does not seem to be any question that the testimony given by the Government witnesses was in all respects totally indefinite with respect to the times, places and amounts

of the alleged payments made to the defendant.

With respect to the testimony of the Government witness Vorcheimer, relating the the Second Count of the Indictment, it is submitted that the testimony of this witness was precisely tailored so as to inculcate the defendant without providing any specific information relating to the charges against the defendant. Vorcheimer testified upon his direct examination that he recalled paying money to the defendant of approximately \$50.00 a week on Thursday or Friday of the weeks in which he paid the defendant, yet upon cross examination totally contradicted himself with respect to these alleged payments. Vorcheimer's certainty of having paid the defendant every week that the defendant was his inspector, which amounted to at least six or seven weeks dissolved into his complete uncertainty with respect to these payments when he realized upon cross examination that the defendant had only been his inspector for a period of two weeks during the time alleged in the Indictment. When confronted with this obvious discrepancy, and asked whether he would then wish to change his testimony so as to indicate that he had only paid Gelfand once or twice he replied "I guess so". It is respectfully submitted, that the Court's reading of the minutes of the testimony of the witness Vorcheimer, will only serve to demonstrate to this Court the witnesses inability to relate any information of substance or credibility relating to the events alleged in Count Two of the Indictment. It is, also, perfectly obvious that Vorcheimer was willing and in

fact did tailor his testimony in whatsoever manner was necessary for him to inculcate the defendant. Again, his certainty as to having paid the defendant, was without any support regarding the times, amounts and places of the alleged payments and that indeed, he flatly contradicted himself with respect to the number of times the defendant had worked in his plant and the number of payments allegedly made to the defendant during this time.

Likewise, the testimony of Government witness Buxbaum, relating to Count Three of the Indictment, is riddled with vague accusations and contradictions. Again, Buxbaum's certainty at having paid the defendant sums of money, was unsubstantiated by any testimony of Buxbaum relating to the number of times he could recall paying the defendant or even indeed the number of times the defendant has worked in his plant during the period alleged in the Indictment. Indeed, Buxbaum testified upon cross examination he could not recall what dates he allegedly paid the defendant, and was unable to state at all that he had in fact paid the defendant during the periods alleged in the Indictment. Finally, Buxbaum could not even state with certainty where the alleged payments had taken place, whether at the offices of Cumberland Provisions, the place specified in the Indictment, or at Stein's Company which he testified was located across the street.

Finally, the testimony of Government witness Katz, relating to Count Four of the Indictment is equally as incredible as the

testimony of the other Government witnesses. Katz was certain upon the direct examination that he had paid the defendant during the period alleged in the Indictment. He reiterated his certainty upon cross examination in stating that he had paid the defendant eight or nine times over the two month period alleged in the Indictment, yet, when confronted with the fact that the defendant had only worked in Katz' plant for a total of two weeks during that entire period, Katz was willing and indeed did change his testimony to state that he had given the defendant only two payments. It could not be more obvious, that Katz, like Vorchheimer and Buxbaum before him, was willing and able to change his testimony in any manner necessary so as to inculcate the defendant without regard to whether or not he had any actual recollection relating to the facts alleged in the Indictment. Indeed, Katz' certainty as to having paid the defendant eight or nine times, which he later reduced to two times, was finally supplanted with his testimony to the effect that he did not remember at all how many weeks there were that the defendant had worked in his plant during the period alleged in the Indictment and that, in fact, he did not know or could not remember who his inspector was during that period.

It is respectfully submitted, that even the most cursory examination of the testimony of this witness, in a light most favorable to the Government, cannot help but indicate that Katz could not and indeed did not have any recollection at all respecting

alleged payments to the defendant during the period alleged in the Indictment. It could not be more obvious that Katz had simply assumed that the defendant had been the recipient of these alleged payments and was willing to so testify regardless of any actual knowledge on his part.

It is respectfully submitted to this Court, that the testimony of the three principle Government witnesses is the product of an attempt by these witnesses to fulfill their part of the bargains reached with the Government respecting the pleas of guilty entered by their respective firms to the charges of having bribed Government officials which matter was fully brought out both on direct and cross examination. It could not be more apparent from the apparent contradictions, lack of personal knowledge, and vague generalizations involved in the testimony of these witnesses that they had, merely sought to inculcate another meat inspector without regard to whether or not they could recall any specifics with regard to the periods alleged in the Indictment.

None of the alleged payments or meetings between the Government witnesses and the defendant were supported by anything other than the uncorroborated testimony of the single witnesses produced by the Government on each Count. It is respectfully submitted that the utter worthlessness of this testimony is made apparent out of the mouths of the witnesses themselves.

Accordingly, it is submitted that on the evidence presented,

there was no substantial evidence to convict the defendant on Counts Two, Three and Four of the Indictment.

POINT II

THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED ON THE BASIS THAT THERE WAS INSUFFICIENT EVIDENCE TO PERMIT THE CASE TO GO TO THE JURY.

It is now settled that the test of how much evidence is required to allow a criminal case to go to a jury is one of whether the jury might fairly conclude guilt beyond a reasonable doubt. United States v. Taylor, 464 F.2d 240 (2d Cir. 1972); United States v. Freeman, 498 F.2d 569, 571 (2d Cir. 1974). See also, In Re Winship, 397 U.S. 358 (1970).

Reference is made here to the argument under the previous point.

It is submitted that by the application of this test, a reasonable jury could not have found the guilt of the defendant in the instant case proved beyond a reasonable doubt and a Judgment of Acquittal should have been directed.

It is further respectfully submitted that the testimony of the Government's witnesses was, at best, vague and ambiguous and, as such, left too much room for the jury to engage in speculation as to the material facts of the offenses charged. Accordingly

defendant's motions were erroneously denied. See, United States v. Bethea, 442 F.2d 790, 792 (CADC 1971); Bailey v. United States, 416 F.2d 1110, 1116 (CADC 1969).

POINT III

21 U.S.C. 622 IS UNCONSTITUTIONAL AND
THE CONVICTION UNDER IT ACCORDINGLY
CANNOT STAND.

- A. BY DENYING THOSE COVERED BY IT THE PRESUMPTION
OF INNOCENCE NORMALLY ACCORDED DEFENDANTS IN A
CRIMINAL TRIAL THE STATUTE EFFECTS A DENIAL OF
DUE PROCESS OF THE LAW.

By its terms 21 U.S.C. 622 is a "strict liability" statute. It specifies that a meat inspector violates it and commits a felony when he accepts "any gift, money, or other thing of value given with any purpose or intent whatsoever." The effect of this statute is to put forward the irrebuttable presumption that a meat inspector who accepts anything (no value is specified) "from any person, firm, or corporation engaged in interstate or foreign commerce" is guilty of a felony. Applying the de minimus rule and the basic maxim of statutory construction specifying ordinary meanings for words unless the drafters specified otherwise, the effect of the statute is still draconian. The First Circuit Court of Appeals found it necessary to soften the impact of the statute by resorting to the Department of Agriculture's personnel regulations which except "acceptance of

the usual courtesies in an obvious family or personal relationship ... when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors." 7 C.F.R. § 0.735-12 cited in U. S. v. Seuss, 474 F.2d 385 (1st Cir. 1973), cert. denied 412 U.S. 928 (1973). This decision glossed over two points that are intertwined in the instant case: whether the Circuit Court may attempt to save a statute by construing with it departmental regulations that will not be employed in enforcing it, and whether a Department of the Executive Branch, may, in implementing the intent of Congress, use fewer powers than Congress embodied in the statute.

On the first of these it is clear that neither the statute nor the Indictment nor the Government's theory of prosecution in this case make any reference to these regulations and their element of rationality. So far as the intent of the framers of this statute was embodied in its language, a meat inspector who has received a bottle of liquor for Christmas from a relative involved in interstate commerce - not even in the meat packing business - is a surely guilty of a felony as one who receives a weekly check for an admitted dereliction of his duties. The ameliorating effects of the regulation will not be felt in the Grand Jury room nor be seen in the Indictment. Without a constitutional challenge they may not appear even in the courts. Surely they cannot

appear only in Circuit Courts of Appeal to rescue an otherwise fatally flawed statute whenever it is challenged.

The Supreme Court has established that an administrative agency cannot go beyond the bounds set by statutes when it promulgates regulations based upon them. Ernst and Ernst v. Hochfelder, 425 U.S. 185 (1976). If in fact, the First Circuit in Seuss, supra. meant to link the regulations it cited to the same Congressional intent that produced the statute, a near converse of the Hochfelder situation arises. A Department of the Executive is promulgating regulations that actually fall short of the legislative intent expressed in the statute. That one co-equal branch of the government can so limit the thrust of the clear intent of another seems at best to be a dubious proposition, and the "self evidence" (Seuss, supra. at 388) of the construction while apparent to the First Circuit Court, might have surprised the drafters of the statute.

While there is no doubt that Congress can pass, and in fact has passed, "strict liability" statutes in many areas (e.g. securities, internal revenue) each of these statutes has been drafted in response to a specific and clearly defined need and applied to it alone. Unlike other strict liability statutes designed to curb abuses, like certain securities transactions or failure to file tax returns, the present statute abridges

due process arbitrarily, almost capriciously. The strict liability under this statute applies to meat inspectors because of "the legitimate Congressional concern with tainted meat and the threat it poses to the public health."

There is, however, no similar liability imposed on grain inspectors or drug inspectors both being covered under the milder terms of 18 U.S.C. 201 which demands that there be some connection shown between the acceptance of the thing of value and the performance of the official act by the public official. That grain or drug inspectors' actions affect the public health and safety, at least as much as meat inspectors', must be obvious, but there is nothing in the legislative history of the statute to show that Congress even considered the issue. (See, 1967 U.S. Code and Congressional and Administrative News pp. 636-653, 2188-2213; U. S. v. Seuss, supra.). The First Circuit in Seuss, cited the response to Sinclair's "The Jungle" as motivating the original passage of the law in 1907 but that fact hardly justifies the continuing and arbitrary denial of due process. 474 F.2d at 388.

Until a meat inspector can allege as a defense any of the many circumstances that could show a lack of intent and so have the opportunity to defend himself from a charge of receiving bribes, as well as can a drug or grain inspector, he will

have been arbitrarily denied due process of the law and the statute abridging this fundamental right cannot stand.

B. BY ARTIFICIALLY CREATING A SMALLER CLASS WITHIN THE GENERAL GROUP OF GOVERNMENT EMPLOYEES AND SUBJECTING MEMBERS OF THAT GROUP TO HARSHER TREATMENT THE STATUTE DENIES THEM EQUAL PROTECTION OF THE LAW.

In enacting this statute, Congress created a class of people with whom it chose to deal in a manner more strict than with others who stood in the same relationship to the government - other inspectors employed by the Department of Agriculture. Congress expressed the desirability that the Secretary of Agriculture's overriding concern "continue to be protection of the consumer from unsanitary, misbranded, adulterated, or diseased meat and meat food products." 1967 U.S. Code Congressional and Administrative News 2202. In furtherance of that end, Congress continued to treat meat inspectors differently from any other similar group. The importance of protecting the public from tainted meat is obvious though its overriding importance is not. There is no language cited in Seuss, supra., to justify this classification of meat inspectors into a special group characterized by a diminution of the right to due process and a concomitant stricter standard of liability. Nor does any rational basis for this distinction appear either within the statute itself or in any of the legislative history. Absent a showing

of such a reason there can be no legislation according different treatment to persons placed into different classes by a statute on the basis of criteria wholly unrelated to the objective of that statute. Reed v. Reed, 404 U.S. 71 (1971). Such a result is forbidden under the equal protection component of the due process clause of the Fifth Amendment. Bolling v. Sharpe, 347 U.S. 497 (1954).

As explained above, the differences in importance to the public well-being between meat inspectors and other federal employees is not such as to justify the vastly disparate treatments accorded them by the different statutes. Not only is the amount of proof that the prosecution must supply to obtain a conviction different but the minimum penalties are also quite different. The penalties provided for in 21 U.S.C. 622 (not less than one year in prison and a fine of not less than \$1,000.00) are much more severe than those of 18 U.S.C. 201(g), its analogue (no minimum sentence or fine).

Arguably, an even stricter standard should be applied to 21 U.S.C. 622 for a conviction under its terms is an obvious threat to personal liberty which would call forth a "strict scrutiny" test from a court weighing its constitutionality. Harper v. Virginia, 383 U.S. 667 (1966). Certainly there is no presumption

in favor of a law that so abridges the rights, privileges and immunities of a citizen. Ex parte Mitsuye Endo, 323 U.S. 283 (1944) and under the test of McLaughlin v. Florida, 379 U.S. 184 (1964), the statute must be held unconstitutional as one that lays an unequal hand on those who have committed the same offense, i.e., on government employees who have received payments.

The statute is, thus, in clear violation of the equal protection component of the due process clause of the Fifth Amendment to the United States Constitution and cannot stand.

C. THE STATUTE IS SO VAGUE AS TO MAKE IT IMPOSSIBLE FOR A REASONABLE PERSON TO BE SURE THAT HE IS NOT VIOLATING ITS TERMS.

In addition to the due process flaws enumerated above, the statute is violative of due process in that neither the accused, nor the trial court, nor the jury can arrive at its meaning or application. This means that a person of common intelligence must guess at what conduct will or will not engender liability under the statute and is so further deprived of due process. Boyce Motor Lines, Inc. v. U. S., 342 U.S. 337 (1951).

The Court in Seuss, supra. proposed a "reasonable" Construction to solve the vagueness problems that it indirectly

acknowledged. (id. at 387-8). It proposed that the words "in connection with or arising out of the performance of their official duties" be read into the statute after the words "prohibiting meat inspectors from accepting things of value," Id. at 388.

The Court offered no greater rationale than "common sense" for this introduction and offered no assurances that any subsequent court would be equally reasonable or possess equal "common sense". The effect on a potential defendant is not to lessen but to compound his problems. Now, in addition to the question of whether a donor of anything he receives is somehow somewhere engaged in interstate commerce there is added the question of whether, if he should be caught and brought to trial, it will be before a reasonable court, one possessed of sufficient common sense to read into the statute what it believes that Congress should have, meant to, or implicitly put there. The Seuss court refrained gracefully from addressing itself to the questions that might be presented if on court's common sense was less rational than another reasonableness or what was expected of a meat inspector. The court ventured to suggest that, despite the reasonable reading of its addition, it meant for the donor rather than the gift to be scrutinized for a connection to the hapless inspector's official functions. Id. at 388 n.4. It suggested that a meat inspector could receive a watch from a friend who worked for an airline. It did not

mention possible difficulties with this example if the friend worked for the airline's commissary and was buying meat from a plant inspected by the hypothetical inspector. It did not mention an example in which a meat inspector could receive a similar watch from his siter who worked for a slaughterhouse. It is not clear from the court's clarification that it can cure the vagueness of the statute even with the clearly inapposite use it makes of the regulations. It is also unclear that a court should, when dealing with a statute so vague, rely on its powers of construction to attempt to salvage it. The appellant respectfully urges that there is nothing this court could do that would save this statute from continuing to work as a denial of due process upon all those unfortunate to come within its ambit. The statute must be held unconstitutional as a result of this denial and the appellant's conviction under it set aside.

CONCLUSION

THE JUDGMENTS OF CONVICTION SHOULD BE
REVERSED.

ON THE BRIEF:
RICHARD F. NACCHIO
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Respectfully submitted,

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AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the ^{#)} 30 day of MARCH, 1977 at No. 225 Cadman Plaza East, Brooklyn, NY

deponent served the within *Brief*
upon U.S. Atty., Eastern District of NY

the Appellee herein, by delivering true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
30 day of March 1977.

[Signature]
Edward Bailey

[Signature]
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132045
Qualified in Richmond County
Commission Expires March 30, 1978